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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/677,737

10/02/2000

Curtis Cole

JBP525

3415

7590

04/07/2005

EXAMINER

YU, GINA C

Philip S Johnson

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ART UNIT

PAPER NUMBER

1617

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/677,737	COLE ET AL.	
	Examiner	Art Unit	
	Gina C. Yu	1617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5,6 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6 and 11-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

✓ ✓

### **DETAILED ACTION**

Receipt is acknowledged of amendment and remarks filed on December 15, 2004. Claims 1-3, 5, 6, and 11-15 are pending. Claim rejections made under 35 U.S.C. § 102 as indicated in the previous Office action dated March 24, 2004 are withdrawn in view of applicants' claim amendment and in view of further consideration by the examiner. The present Office action is made non-final because claims 6 and 11-15 are rejected under 35 U.S.C. § 102 (e) over Perricone (US 6365623 B1) ('623) for the first time in this action.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-3, 6, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Tokuyama et al. (EP 1090630 A1) (“Tokuyama”).**

Tokuyama discloses method of treating atopic dermatitis such as erythema by topically applying a composition comprising ethanolamine in cosmetically acceptable carriers. See abstract; par. 0234-0259; instant claims 1, 10, and 11. See par. 0006 which meets the formula and the constituents of instant claims 1 and 11. Par. 0011

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discloses 2-ethylaminoethanol, diethanolamine, diethanolamine, and 2-dimethylaminoethanol, and specific formulations comprising 1 % by weight of the ethanolamines are disclosed in Examples 13-16, among others. See par. 120-124; instant claims 1, 2, 3, 12, 13. The compositions also comprise paraben and ethanol, potentially skin-irritating materials. See instant claims 6. See par. 2 for instant claim 9. See Berndt (US 5626856), col. 1, lines 55 – 64. The claimed method of “ameliorating the irritating effects of a skin irritating composition” is inherently practiced by making the Tokuyama composition by adding paraben with dimethylethanolamine as disclosed by the reference.

In response filed on December 15, 2004, applicants assert, “there is nothing in the teachings of Tokuyama that would provide one of ordinary skill in the art with the motivation to use the skin conditioning composition taught by Tokuyama in method for ameliorating the irritating effects of a skin irritating composition”. Examiner respectfully points out that the objective of the prior art is to alleviate “skin symptoms such as itchiness, dry marks, erythema and lichenification associated with atopic dermatitis”. The reference teaches in paragraph [0002] that the skin to be treated is damaged by uv rays and irritants, among others. In fact, the reference discloses that clinical tests of the invention is tested on photoinflamed skin. See Test Example 8. Furthermore, examiner views that there is no patentable distinction between the skin damage as described by the prior arts and applicants. For example, there is no evidence to indicate that the inflamed skin conditions of the users of the Tokuyama patent are different from the recited skin conditions, i.e., “sun burned skin”, “wind burned skin” or

“skin that is red or inflamed due to contact with irritating soaps or cleansers”. Thus, examiner views that the claimed invention is anticipated by the prior art.

**Claims 1-3, 5, 6, and 11-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Perricone (US 6365623 B1) ('623).**

'623 patent teaches method of treating acne in inflammation phase by applying a composition comprising lipoic acid and most preferably adjunct ingredients such as 0.5 – 5 % by weight of methyl or ethyl-aminoalcohols or 0.05-% by weight of tyrosine. See col. 1, line 21 – col. 2, line 6; col. 5, 30-53; col. 8, lines 41-61; col. 9, lines 16-22; instant claims 1, 4, 11, and 12. The patent specifically states, “one particularly efficacious embodiment of the invention contains lipoic acid, glycolic or lactic acid, and dimethylaminoalcohol; and another further contains tyrosine.” See col. 9, lines 21-23. The reference teaches that Examiner asserts that the claimed method is anticipated by the specific teaching here. As for claims 6 and 11, the reference teaches to incorporate benzyl peroxide, retinoids, alpha-hydroxy acids such as glycolic acids, which potentially irritate the skin. See Ren (US 6183747 B1), col. 2, lines 2 –18; Ptchelintsev et al. (US 6333356 B1), col. 1, lines 40-49. The claimed method for “ameliorating the irritating effects of a skin irritating composition” is inherently practiced by making the anti-acne composition by adding the ingredients such as glycolic acids or retinoid with dimethylethanolamine and tyrosine as taught by Perricone.

### ***Response to Arguments***

Applicant's arguments filed on December 15, 2004 have been fully considered but they are moot in view of new grounds of rejection in part and are not persuasive in part. See above rejections.

**Conclusion**


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-0635. The examiner can normally be reached on Monday through Friday, from 8:30 AM until 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu  
Patent Examiner

  
SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER